

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MELISSA POYER, JOANNE MOYNIHAN,  
NICOLE PETKER, *and* KIMBERLY MARINO,  
*individually and on behalf of all others similarly situated,*

Plaintiffs,

-against-

SNOW TEETH WHITENING LLC *doing business as*  
SNOW, SNOW COSMETICS LLC *doing business as*  
SNOW, FORESOLD LLC *doing business as* FORESOLD,  
*and* JOSHUA ELIZETXE,

Defendants.

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**AZRACK, United States District Judge:**

For Online Publication Only

**ORDER**  
22-CV-1506 (JMA) (ST)

**FILED  
CLERK**

11:19 am, Sep 14, 2023

**U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

In their March 18, 2022, Complaint, Plaintiffs Melissa Poyer (“Poyer”), Joanne Moynihan (“Moynihan”), Nicole Petker (“Petker”), and Kimberly Marino (“Marino,” and collectively “Plaintiffs”) alleged that Defendants Snow Teeth Whitening LLC d/b/a Snow, Snow Cosmetics LLC d/b/a Snow, Foresold LLC d/b/a Foresold, and Joshua Elizetxe (collectively “Defendants”), used false advertising and marketing for Defendants’ at-home LED teeth whitening products, in violation of New York State law, and that Plaintiffs incurred resulting damages.

On February 3, 2023, Defendants filed a motion to dismiss the Complaint for lack of Article III standing pursuant to Federal Rule of Civil Procedure 12(b)(1), which was referred to Magistrate Judge Steven Tiscione for a Report and Recommendation (“R&R”) that same day. (See February 3, 2023 Referral Order.) On May 5, 2023, Magistrate Judge Tiscione issued an R&R wherein he recommended that Defendants’ motion to dismiss be granted in part and denied in part. (ECF No. 33.) Now before the Court are Plaintiffs’ objections to Magistrate Judge Tiscione’s R&R, which recommends that the Court grant Defendants’ motion in part and deny it in part, and dismiss, with

prejudice, all of Plaintiffs' claims for lack of standing, with the exception of the LED light enhancement claim brought by Plaintiff Petker individually and on behalf of the prospective class. (ECF No. 35.) After conducting a review of the full record (including the motion papers, R&R, and objections) and applicable law, the Court adopts Magistrate Judge Tiscione's R&R in its entirety as the opinion of the Court.

In reviewing a magistrate judge's report and recommendation, a court must "make a de novo determination of those portions of the report or...recommendations to which objection[s] [are] made." 28 U.S.C. § 636(b)(1)(C); see also United States ex rel. Coyne v. Amgen, Inc., 243 F. Supp. 3d 295, 297 (E.D.N.Y. 2017), aff'd sub nom. Coyne v. Amgen, Inc., 717 F. App'x 26 (2d Cir. 2017). The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Those portions of a report and recommendation to which there is no specific reasoned objection are reviewed for clear error. See Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

The Court finds no clear error in the portions of Magistrate Judge Tiscione's R&R to which there are no objections. Next, the Court turns to the portion of the R&R to which Plaintiffs have objected. Specifically, Plaintiffs object to the R&R's recommendations that the individual and class claims brought by Plaintiffs Poyer and Marino should be dismissed with prejudice, for lack of Article III standing.<sup>1</sup> (See ECF Nos. 33, 35.)

After conducting a de novo review of the full record (including the motion papers, R&R, and objections) and applicable law, the Court agrees with Magistrate Judge Tiscione's recommendations, and therefore adopts the R&R in its entirety as the opinion of the Court.

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<sup>1</sup> Plaintiffs did not object to the R&R's recommendation that Plaintiff Moynihan's claims be dismissed for lack of Article III standing. (See generally ECF No. 35.)

Accordingly, the Court grants Defendants' motion in part and denies it in part, and dismisses, with prejudice, the individual and class claims brought by Plaintiffs Poyer, Moynihan, and Marino. However, Plaintiff Petker's individual and class-brought LED light enhancement claim shall proceed.

**SO ORDERED.**

Dated: September 14, 2023  
Central Islip, New York

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/s/ (JMA)  
JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE